

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

KATRINA READY,)
)
Petitioner,)
)
v.) **2:07-cv-618-WHA**
)
UNITED STATES OF AMERICA, et al.)
)
Respondents.)

**RESPONSE TO PETITION FILED PURSUANT TO TITLE 28,
UNITED STATES CODE, SECTION 2241**

Comes now the respondent, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and pursuant to the Court's Order of July 6, 2007, responds to the petition filed pursuant to 28 U.S.C. § 2241.

I. Subject Matter Jurisdiction

Petitioner brings this action pursuant to 28 U.S.C. § 2241. Section 2241 provides an avenue of relief for inmates who allege violations of federal law which make the place, condition, or duration of confinement illegal through a petition for writ of habeas corpus. The claims presented are properly brought as a petition for writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 499 (1973); Abella v. Rubino, 63 F.3d 1063, 1066 (11th Cir. 1995). Thus, the court has subject matter jurisdiction.

II. Parties

A. Petitioner

Petitioner, Katrina Ready, federal register number 10772-002, is currently

incarcerated at the Elmore County, Alabama Jail. She is currently serving 80 months with five years supervised release for conspiracy to possess with intent to distribute marijuana and methamphetamine of 21 USC § 846.¹ The petitioner's projected release date is September 24, 2007.²

B. Respondents

Petitioner has named the United States of America, the Bureau of Prisons, and Susan Roberts, Warden of the Elmore County Jail, as respondents in this matter. The proper respondent in federal habeas cases is the custodian of the institution having custody of the petitioner. See 28 U.S.C. § 2243. Rumsfeld v. Padilla, --U.S.--, 124 S.Ct. 2711, 2717-18 (2004) (the only proper respondent in a section 2241 habeas case is the prisoner's immediate custodian.); Braden v. 30th Judicial Circuit Court, 410 U.S. 484 (1973).

III. Petition

Petitioner has filed a habeas petition pursuant to 28 U.S.C. § 2241 claiming her due process rights were violated because she was transferred from Bannum Place, Community Corrections Center (CCC) to the Elmore County Jail and possibly being returned to a BOP prison.

¹ See, Judgment, Doc. 389, 1:00-cr-00151-WHA-11, United States District Court for the Middle District of Alabama.

² Evidence in support of the petitioner's projected release date to be offered at the hearing scheduled in this matter for July 9, 2007.

Petitioner alleges, in essence, that she was denied her due process rights during the disciplinary process which resulted in her removal from Bannum Place to the Elmore County Jail and possibly to a BOP prison. Petitioner was scheduled to be released from the halfway house on August 11, 2007, but as a result of her testing positive for the presence of alcohol while a resident at Bannum Place she is projected to be released from the BOP on September 24, 2007.

IV. Disciplinary Procedures At CCCs

Pursuant to Program Statement (PS) 7300.09, Community Corrections Manual, Chapter 5.7, CCCs are required by the term of their contracts to use a discipline system where a BOP Discipline Hearing Officer (DHO) takes final action. Thus, several BOP forms are used during the CCC's discipline process. See Relevant Sections of PS 7300.09, **Attachment 2.**³ CCC's utilize Table 3 of the Prohibited Acts and Disciplinary Scale contained in PS 5270.07, Discipline and Special Housing Units. **Attachment 3**, PS 5270.07, Table 3.

Ordinarily, within three working days of receipt of the Center Disciplinary Committee (CDC) packet, a Discipline Hearing Officer (DHO) shall review it for compliance with the CDC discipline policy specified in PS 7300.09 and Wolff v. McDonnell. The DHO shall complete the Checklist for Center Discipline Committee Certification form and place it in front of the CDC packet. The DHO shall also sign and

³ Attachment 1 intentionally omitted.

date the CDC Report on the top right side to certify compliance with disciplinary requirements. If the DHO is not satisfied that all criteria are met, they will return the packets and point out errors and omissions to be corrected. If the DHO experiences recurring problems, the Community Corrections Manager (CCM) should be notified so the issue can be addressed as a matter of contract compliance.

Pursuant to PS 7300.09, inmates may appeal disciplinary action imposed by the CCC/CDC staff or DHO through the Administrative Remedy process. When disciplinary action is imposed, the inmate shall be advised of the appeal procedures. See **Attachment 1**, Section, 5.7.6. If the inmate is being transferred to a federal institution, he/she shall wait to use the Administrative Remedy procedure upon arrival at the institution. *Id.*

V. Statement of Facts ⁴

On May 8, 2007, the petitioner was required to provide a urine sample to officials of Bannum Place which was tested for the presence of various contraband, including alcohol. Ms. Oliver, a female employee of Bannum Place requested the sample from the petitioner in accordance with a schedule for random testing of the residents established by the director, Mr. Coleman and another facility employee, Mr. Vane

The petitioner and Ms. Oliver entered the staff restroom which contains two toilets not separated by a divider of any kind where the petitioner was required to urinate in a

⁴ The United States will present evidence, testimonial and documentary, in support of the averments in this section during the course of the hearing scheduled to be held in this matter on July 9, 2007.

collection cup and then pour her urine into a collection bottle. All this was done in the presence of Ms. Oliver, who then, in the presence of the petitioner, placed a seal on the bottle which bore a unique identifying number, 807127. The petitioner was then required to sign the seal placed on the bottle. The petitioner was also required to certify that the sample contained in the bottle bearing her signature was hers. The specimen was forwarded to Redwood Toxicology Laboratory for analysis. On May 15, 2007, Redwood Toxicology Laboratory reported that the specimen bearing # 807127, collected from identification number 10772-002, the petitioner's BOP registration number, was positive for the presence of alcohol (ethanol).

Given that this indicated the petitioner had violated facility rules of which she was apprised on March 23, 2007, the petitioner was transferred to the Elmore County Jail on May 16, 2007, pending disciplinary action for a violation of Code 222, Making , Possessing or Using Intoxicants. On May 23, 2007, Ms. Oliver delivered a copy of the incident report, BP Form S 206.073 to the petitioner at the Elmore County Jail and a Notice of Center Discipline Committee Hearing, BP Form S 207.073. The petitioner identified Lloyd Snellgrove and Brenda Henderson as witnesses who wold present evidence on her behalf at the the hearing scheduled for May 29, 2007 at the Elmore County Jail.

At the hearing held on May 29, 2007, the petitioner declined to address the charges or to offer any evidence to refute the results of the report of the Redwood Toxicology

Laboratory report. Given the absence of any wrongdoing regarding the collection, testing, or authenticity of the specimen, the hearing officer, Ms. Carolyn Rollins determined that the petitioner had committed a violation of the applicable rules and recommended that the Disciplinary Hearing Officer (DHO), if it affirmed the violation had occurred, impose a penalty disallowing between 25% and 50% of the petitioner's good time credit and a disciplinary transfer.

The matter was referred to a DHO of the BOP which certified the proceedings held by Ms. Rollins. Given the loss of good time prescribed by Ms. Rollins and certified by the DHO, the petitioner's projected release date is September 24, 2007.

VI. Legal Analysis

A. Petitioner Received The Procedural Protections Mandated By Wolff

The petitioner states her due process rights were violated because she was "never given an opportunity to testify nor call witnesses in her behalf. With any procedural due process challenge, the first question is whether the injury claimed by plaintiff is within the scope of the Due Process Clause. Kirby v. Siegelman, 195 F.3d 1285, 1290 (11th Cir. 1999); Bass v. Perrin, 170 F.3d 1312, 1318 (11th Cir. 1990). The Due Process Clause protects against deprivations of "life, liberty, or property without due process of law." U.S. Const. Amend. XIV. In this case, a liberty interest is created because the petitioner lost 47 days good conduct as a result of the disciplinary infraction. See, Wolff v. McDonnell, 418 U.S. 539, 558 (1974)(prisoners may not be deprived of statutory "good

time credits" without due process).

Under Wolff, where a liberty interest is implicated, several protections must be afforded to ensure due process during the discipline process. These protections include, 1) a minimum 24 hour advance written notice of the claimed misconduct, 2) an opportunity to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals, 3) a written statement by the fact finders as to the evidence relied on and the reasons for the disciplinary action taken. Wolff at 563-566.

The petitioner was given 24 hour advance written notice of the charges, access to a staff representative, notice of her rights, and the opportunity to present witnesses and documentary evidence at the hearing. After the hearing, the petitioner was given specific reasons for the CDC decision and the rationale for the recommended disciplinary action. Therefore, the petitioner received all due process protections.

C. The DHO Had Enough Evidence To Certify The CDC Finding

A minimum requirement of due process is that conclusions of prison disciplinary bodies be "supported by some evidence in the record." Superintendent, Mass. Institution Facility v. Hill, 472 U.S. 445, 454 (1985). "Ascertaining whether this standard is satisfied does not require [a reviewing court's] examination of the entire record, independent assessment of the credibility of witnesses, or weighing the evidence. Instead, the relevant question is whether there is any evidence in the record that could

support the conclusion reached by the disciplinary board. "Id. at 455-56; Thomas v. Fountain, 77 F.3d 372, 375 (11th Cir. 1996).

In the instant case, there is evidence in the record that the petitioner, in fact, used alcohol. Her urine specimen collected on May 8, 2007 revealed the presence of alcohol. This alone is enough to sustain the finding Petitioner committed the act as charged and the sanctions imposed were appropriate. Moreover, the petitioner can produce no evidence that the specimen was tampered with or not tested in accordance with accepted scientific practices.

VIII. Recommendation

For the reasons indicated above, Petitioner's motion is due to be and should be denied.

Respectfully submitted this 8th day of July, 2007.

LEURA G. CANARY
United States Attorney

By: s/R. Randolph Neeley
R. Randolph Neeley
Assistant United States Attorney
Bar Number: #9083-E56R
Attorney for Defendant
United States Attorney's Office
Post Office Box 197
Montgomery, AL 36101-0197
Telephone: (334) 223-7280
Facsimile:
E-mail: rand.neeley@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/EDF system which will send notification of such filing to plaintiff's attorney, Benjamin E. Pool, Esq.

s/R. Randolph Neeley

R. Randolph Neeley
Post Office Box 197
Montgomery, AL 36101-0197
Telephone: (334) 223-7280
Facsimile: (334) 223-7418
E-Mail: rand.neeley@usdoj.gov
Bar Number: #9083-E56R

RESPONDENT'S EXHIBIT 2





U.S. Department of Justice
Federal Bureau of Prisons

Program Statement

OPI: CCD
NUMBER: 7300.09
DATE: 1/12/98
SUBJECT: Community Corrections Manual

1. PURPOSE AND SCOPE. To operate community-based corrections for offenders who are reintegrating into communities and require more supervision than traditional probation or parole, or who need an alternative to incarceration. Community corrections is also responsible for managing Federal offenders confined in non-Bureau facilities. Most Bureau community corrections programs are implemented through contracts and agreements with private service providers and with state or local governments.

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. A variety of community-based correctional services and programs will be available for offenders.

b. Contracts and budgets for community-based services and programs will be effectively managed.

c. Offenders in community programs will receive appropriate supervision.

d. The public will be protected from undue risk.

e. Offenders in community programs will be provided safe living environments.

f. Eligible inmates in community programs will have opportunities for work experiences to develop positive skills, knowledge, and work habits.

PS 7300.09
1/12/98
Chapter 5, Page 17

shall be called to pick up the inmate immediately, unless the CCM chooses to expunge the incident report and charge the inmate with another accountability code.

If there are no significant criminal charges and a transfer to a Bureau institution is the most appropriate course of action, regular transfer procedures shall be followed as with any other CCC failure.

(6) If significant time has passed (weeks or more) from the date of escape and/or there have been significant criminal charges, the CCM shall do a new Inmate Load and Security Designation Form, BP-S337.

(7) The Program Statement on Escape from Extended Limits of Confinement, provides guidelines for giving full credit for time served while detained or arrested, gives procedures for when a state institution is designated for continued service of Federal sentence, and explains situations where escape status is to be nullified. Complex situations for which there appear to be no clear policy guidelines must be referred to the Regional Inmate Systems Administrator (RISA).

(8) The CCM shall check quarterly to see if an escapee has been apprehended via SENTRY, NCIC, and the USMS. The results of this check shall be documented.

5.7 DISCIPLINE/IN-PROGRAM FAILURES. This section applies to all inmates in contract facilities which are required, by the terms of their contract, to utilize a discipline system in which a Bureau DHO takes final action. For inmates identified as having sentences affected by the Violent Crime Control and Law Enforcement Act (VCCLEA) and the Prison Litigation Reform Act (PLRA), also see Section 5.8, SPECIAL DISCIPLINE PROCEDURES FOR VCCLEA/PLRA INMATES IN NON-FEDERAL FACILITIES.

For those contract facilities which are not required to utilize Bureau discipline procedures (generally local jails and state Department of Correction's) the CCM will ensure the facilities utilize and adhere to the concepts of due process as outlined in Wolff v. McDonnell.

The Program Statement on Inmate Discipline and Special Housing Units and prescribed procedures for inmate discipline as contained in the contractors respective Statement of Work shall be referenced.

PS 7300.09
1/12/98
Chapter 5, Page 18

The following Bureau forms are used during the community corrections disciplinary process and can be found on BOPDOCs:

BP-S494.073 Checklist for Center Discipline Committee Certification;
 BP-S205.073 Incident Report (CCC's);
 BP-S206.073 Inmate's Rights at Center Discipline Committee Hearing (CCC's);
 BP-S207.073 Notice of Center Discipline Committee Hearing (CCC's);
 BP-S495.073 Waiver of Appearance (CCC's);
 BP-S209.073 Duties of Staff Representatives (CCC's);
 BP-S208-073 Center Disciplinary Committee Report (CCC's);
 BP-S389.058 Statutory Good Time Action Notice;
 BP-S390.058 Extra Good Time Recommendation; and
 BP-S448.058 Good Conduct Time Action Notice.

The following tables are used during the community corrections disciplinary process and can be found in the Program Statement on **Inmate Discipline and Special Housing Units**:

Table 3	Prohibited Acts and Disciplinary Scale
Table 4	Sanctions (<u>Note:</u> Sanctions applies with the exception that the VCCLERA/PLRA exemplary compliance requirement does not apply to inmates in contract facilities).
Table 5	Sanctions for Repetition of Prohibited Acts within the Same Category

The Discipline Hearing Administrator (DHA) is responsible for establishing procedures, within their respective region, for mailing completed CDC packets for review and imposition of final action.

5.7.1. Community Corrections Center Staff

The contractor shall comply with the Bureau of Prisons prescribed policy and procedures for inmate discipline as contained in their respective Statement of Work. No deviation from this policy may be permitted.

5.7.2. Procedures Upon Admission to Center

The contractor shall furnish a copy of "Table 3-Prohibited Acts and Disciplinary Scale," found in the Program Statement on **Inmate Discipline and Special Housing Units**, the center's disciplinary system, and the established rules of the facility to each new offender upon arrival. Copies of these documents shall be posted at a prominent location accessible to all offenders. The

PS 7300.09
1/12/98
Chapter 5, Page 19

offender's file shall contain a receipt, signed by the offender, stating that the offender has received and understands the contents of these documents.

5.7.3. Discipline Hearing Officer (DHO)

Ordinarily, within three working days of receipt of the Center Disciplinary Committee (CDC) Packet, the DHO shall review it for compliance with the CDC discipline policy specified in this Manual and Wolff v. McDonnell. If there are any discrepancies in the CDC packet, the DHO shall communicate directly with the Chairperson of the CDC by telephone or written correspondence. In order to ensure that all phases of the discipline hearing record are complete and the findings are based on facts, the procedures have been followed, and that any delays are justified, the DHO shall complete Form BP-S494.073, "Checklist for Center Discipline Committee Certification," and place it in the front of the CDC packet. The DHO shall also sign and date the Center Discipline Committee Report on the top right side to certify compliance with disciplinary requirements. If the DHO is not satisfied that all criteria are met, they will return the packets and point out errors and omissions to be corrected. If the DHO experiences recurring problems the CCM should be notified so the issue can be addressed as a matter of contract compliance. If the DHO is satisfied that all criteria are met, they will certify, impose final action, and sign and date the CDC report.

Additionally, the DHO will enter the incident report and charges using the SENTRY transaction "Update Charges" as well as revise the "Add Hearings/Findings" transaction immediately after final action is taken and enter the SENTRY report number in the upper right corner of the Checklist for CDC Certification. The report will be given an initial incident report status of "CDC." If an inmate has any prior discipline action, the DHO shall determine if there are any executable suspended sanctions using the SENTRY Sanctions Available to Execute. The Update Charges transaction should be done as soon as the packet is received from the CCC, even if the case is to be returned for corrective action. Doing so provides an effective tracking system of reports under review.

The DHO shall maintain a log to record pertinent information on each case reviewed. At a minimum, the log shall include; the inmate name, register number, facility, date of CDC hearing, date received by DHO, date returned (if errors were discovered), date reply received, final action date, SENTRY entry date, SENTRY

PS 7300.09
1/12/98
Chapter 5, Page 20

Incident Report number and date forwarded to the CCM. This information shall be available for review by the Discipline Hearing Administrator and the Community Corrections Administrator.

5.7.4. Procedures CCM to Follow After Imposition of Sanctions

When the CCM receives the CDC packet from the DHO, they shall further review the CDC packet to ensure that it has been certified, sanctions imposed, signed and dated by the DHO as required. The DHO's sanction is final and subject only to the CCM's review to ensure conformity with the provisions of the Community corrections discipline policy.

The CCM shall also ensure the sentence is recomputed and/or initiate the transfer, if appropriate, and ensure that any other sanctions imposed by the DHO are executed in accordance with directives.

The CCM shall notify facility staff in writing of decisions and provide a copy of the CDC report for the inmate within three working days, if possible, but no longer than five working days from date of receipt of the final disposition from the DHO. Part II of the Incident Report (investigation) may not be given to the inmate. Any exceptions to this notification procedure must be justified and documented. If the inmate's whereabouts are unknown, as in the case of an escapee, the report and all material shall be sent to the parent institution for inclusion in the inmate central file. If an inmate is in-transit, his or her copy is to be sent to the transfer destination with a note to deliver it to the inmate upon arrival. Whatever action is taken to provide an inmate with his copy of the CDC report, must also be documented on the CCM's copy.

The CCM shall forward a copy of the CDC report to the U.S. Parole Commission on all cases with a parole date.

The CCM shall maintain a copy of a complete CDC packet for 12 months or until the next program or operational review is conducted. In escape cases, a duplicate packet shall be maintained until it has been determined the inmate has been returned to custody and the discipline process has been completed.

The CCM shall maintain a log to record pertinent information on each case processed. At a minimum, the log shall include; the inmate name, register number, facility, date of CDC hearing, date received from DHO, final action date, SENTRY Incident Report number, and the date a copy was sent to Inmate/CCC/USPC. This

PS 7300.09
1/12/98
Chapter 5, Page 21

information shall be available for review by the Discipline Hearing Administrator and the Community Corrections Administrator and shall be retained for at least two years.

Unless otherwise specified in the respective contract, state and local institutions and detention facilities may use their own discipline procedures as long as they comply with the due process requirements of Wolff v. McDonnell. These facilities may choose to use the procedures and forms for discipline in CCCs, providing the documents are modified to indicate the facility is other than a CCC. The CCM shall closely monitor these discipline systems to ensure continued compliance with Wolff v. McDonnell requirements.

5.7.5. SENTRY Transactions

The CCM shall complete and place in the inmate's file any of the following forms that are applicable: Form BP-S389.058, Statutory Good Time Action Notice; Form BP-S390.058, Extra Good Time Recommendation; Form BP-S448.058, Good Conduct Time Action Notice. The CCM shall forfeit and/or disallow any Good Time in SENTRY as directed by the DHO.

5.7.6. Appeals

An inmate in a Community corrections facility or program may contest disciplinary action imposed by the CCC/CDC staff or the DHO by appealing through the Administrative Remedy Program. At the time the inmate is advised of the disciplinary action, they shall also be advised of appeal procedures.

If the appeal involves only minor sanctions imposed by CCC/CDC staff, a Request for Administrative Remedy (EMS Form 229 - not available on BOPDOCS, paper only), may be used to appeal the action to the CCM. Minor disciplinary sanctions are not entered into the SENTRY "Inmate Discipline Data System." However, when a CCC/CDC minor sanction is appealed to the CCM via a Request for Administrative Remedy, the CCM must ensure that the appropriate data is entered into the SENTRY Administrative Remedy Module.

If the appeal involves final sanctions imposed by the DHO on an incident report (major or minor), the following shall determine the method to file an appeal:

Request for Administrative Remedy form, filed with the respective Regional Director for inmates still assigned to a CCC.

PS 7300.09
1/12/98
Chapter 5, Page 22

Letter to the Regional Director for inmates who have been removed from a CCC and placed in local jails or contract detention facilities and do not have access to the appropriate appeal form.

If the inmate is to be transferred to a Federal institution, the inmate should wait to use the Administrative Remedy procedure upon arrival at the institution.

5.7.7. Training Plans/Agenda

The DHO shall ensure inmate discipline training is provided for the contractor and CCM staff annually and any additional training as needed. The training agenda shall focus on major problem areas identified during DHO review of the CDC packets.

The CCM shall continue to provide initial guidance and supplementary training to new staff or contractors between the regional-wide training conferences. All discipline training provided to contractors shall be documented in the CCM contract file.

5.8. SPECIAL DISCIPLINE PROCEDURES FOR VCCLEA/PLRA INMATES IN NON-FEDERAL FACILITIES. Specific procedures relating to VCCLEA/PLRA are being developed.

5.9. TRANSFER OF INMATES

5.9.1. Authority to transfer Federal inmates between non-Federal facilities and from non-Federal facilities to Federal institutions is delegated to CCMs. General procedures are provided in the Security Designation and Custody Classification Manual. When transferring inmates, care must be taken to obtain CIM clearance when necessary, and to inform regional staff of cases that may evoke publicity or require unusual handling.

5.9.2. CCMs must obtain approval from the receiving facility (or other CCM if the receiving facility is in another service area) before ordering transfer of inmates to other non-Federal facilities. Ordinarily, CCMs must approve transfers from one facility to another within the same agency or state correctional system prior to the transfer. CCMs may authorize transfers from non-Federal to Federal institutions, but must consult with the Regional Designator.

5.9.3. Appropriate transfer codes must be used in accordance with current directives. A disciplinary transfer (Transfer Code 309) requires this sanction to be formally imposed by the DHO following a CDC hearing.

PS 7300.09
1/12/98
Chapter 5, Page 23

5.9.4. CCMs shall use the SENTRY redesignation transaction to authorize the transfer of CCC program failures to Federal institutions. CCMs shall include appropriate comments (program failure, etc.) in the Remarks section of the redesignation screen and do not need to send EMS messages to explain the redesignation unless there is insufficient space in the Remarks section. Redesignations will appear on the designated institution's daily log and will place inmates in the "pipeline" for population management purposes.

5.9.5. CCMs shall obtain CIM clearance before redesignation. Following a determination that an inmate should be returned to an institution, and after CIM clearance and consultation with the Regional Designator, if necessary, the redesignation shall be completed as follows:

Register Number	:	12345-678
Name	:	Kilroy
Sex, Race, Age	:	
Custody	:	
ARS Status	:	
Resident	:	
Level	:	
Facility Designated	:	LOM

5.9.6. Standard Form BP-S399.058, Transfer Order, shall be provided to the USMS. When time constraints require expedience, CCMs may provide transfer orders to the USMS via teletype, facsimile, or SENTRY using EMS Form 417. A signed, printed copy serves as the original for the USMS, and copies may be routed to the ISM at the receiving institution, the Regional Designator, and the U.S. Parole Commission, if applicable. A SENTRY-generated In-Transit Information Form should also be provided to the USMS. The CCM provides a copy to the receiving facility.

5.9.7. CCMs shall ensure that file material, including original disciplinary reports and copies of communications to the U.S. Parole Commission, are forwarded immediately to redesignated institutions. They shall notify institutions of special circumstances that might affect an inmate's release date or future institution adjustment.

5.9.8. CCM staff shall remove inmates from EGT earning status (SENTRY Sentence Monitoring) when they are removed from CCCs and shall modify the sentence computation to reflect forfeited or withheld statutory good time.

PS 7300.09
1/12/98
Chapter 5, Page 24

5.10. PAROLE HEARING PROCEDURES

CCMs are responsible for establishing procedures for U.S. Parole Commission hearings on all eligible inmates. CCMs must develop parole files for inmates who are eligible for parole, prepare dockets, submit lists of eligible inmates to the U.S. Parole Commission, and help facilitate arrangements for hearings. If the non-Federal institution does the docketing, the CCM must thoroughly monitor the procedure. One suggested method of monitoring would be to use the Parole Date sentence computation function of SENTRY to establish a parole waiting list in SENTRY, similar to Federal institutions.

The U.S. Parole Commission must be notified whenever a CCC inmate with an effective parole date is arrested before the release date.

The U.S. Parole Commission must receive a mini-file on these inmates by the 10th of the month preceding the month of the examiners arrival for the hearings. The files must include: parole application, sentence computation, Presentence Investigation Report and probation revocation report, if applicable. If available, the following should also be sent: FBI arrest record (rap sheet), classification study, Report on Committed Offender (AO 235), and Report on Convicted Offender by United States Attorney (USA-792).

5.11. VICTIM AND WITNESS PROTECTION ACT OF 1982

The Program Statement on Victim and Witness Notification is the primary document for procedures in this area.

Transferring institutions are to advise the party to be notified at the time the CCC acceptance date is established. CCMs must ensure this has been done. Form If the inmate is released prior to the date noted on BP-S323.014, Victim and Witness Notice, the CCM must renotify the victim or witness. When an inmate's custody is extended beyond the scheduled release date; it is not necessary to renotify the victim or witness. CCMs shall notify the interested party if the inmate goes on furlough, dies, or is apprehended as an escapee. Attachments to the Program Statement can be used for making notifications. If the inmate escapes, the CCM shall make immediate notification by telephone. CCMs shall ensure the SENTRY Daily Log transaction is used to monitor Victim/ Witness Program cases placed in CCCs under their responsibility.

RESPONDENT'S EXHIBIT 3





U.S. Department of Justice
Federal Bureau of Prisons

Program Statement

OPI: CPD/CORR
NUMBER: 5270.07
DATE: December 29, 1987
SUBJECT: Inmate Discipline and Special Housing Units

This Program Statement transmits policies and procedures prescribed for Inmate Discipline and Special Housing Units. This Program Statement becomes effective January 4, 1988. This effective date means that the new rules and procedures will apply to the processing of all acts of misconduct committed at and after 12:01 a.m. on January 4, 1988.

\s\
J. MICHAEL QUINLAN
Director

[Bracketed Bold - Rules]

Regular Type - Implementing Information

NOTE: ONLY SIGNIFICANT CHANGES IN THE FORMER PROGRAM STATEMENT ON INMATE DISCIPLINE (P.S. 5270.6) ARE INDICATED BY THE FOLLOWING SYMBOL: *

TABLE 3 - PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE
GREATEST CATEGORY

The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.

<u>CODE</u>	<u>PROHIBITED ACTS</u>	<u>SANCTIONS</u>
100	Killing	A. Recommend parole date rescission or retardation.
101	Assaulting any person (includes sexual assault) or an armed assault on the institution's secure perimeter (a charge for assaulting any person at this level is to be used only when serious physical injury has been attempted or carried out by an inmate)	B. Forfeit earned statutory good time or non-vested good conduct time (up to 100%) and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
102	Escape from escort; escape from a secure institution (low, medium, and high security level and administrative institutions); or escape from a minimum institution <u>with</u> violence	B.1 Disallow ordinarily between 50 and 75 $\frac{1}{2}$ (27-41 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
103	Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest Severity, e.g. in furtherance of a riot or escape; otherwise the charge is properly classified Code 218, or 329)	C. Disciplinary Transfer (recommend). D. Disciplinary segregation (up to 60 days). E. Make monetary restitution. F. Withhold statutory good time (Note - can be in addition to A through E - cannot be the only sanction executed). G. Loss of privileges (Note - can be in addition to A through E - cannot be the only sanction executed).]

[TABLE 3 (Cont'd)]
GREATEST CATEGORY (Cont'd)

CODE	PROHIBITED ACTS	SANCTIONS
104	Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive or any ammunition	Sanctions A-G]
105	Rioting	
106	Encouraging others to riot	
107	Taking hostage(s)	
108	Possession, manufacture, or introduction of a hazardous tool (Tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional security or personal safety; e.g., hack-saw blade)	
109	(Not to be used)	
110	Refusing to provide a urine sample or to take part in other drug-abuse testing	
111	Introduction of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	
112	Use of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	
113	Possession of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	
197	Use of the telephone to further criminal activity.	

[TABLE 3 (Cont'd)]
GREATEST CATEGORY (Cont'd)

CODE	PROHIBITED ACTS	SANCTIONS
198	Interfering with a staff member in the performance of duties. (<u>Conduct must be of the Greatest Severity nature.</u>) This charge is to be used only when another charge of greatest severity is not applicable.	Sanctions A-G]
199	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (<u>Conduct must be of the Greatest Severity nature.</u>) This charge is to be used only when another charge of greatest severity is not applicable.	

PS 5270.07
 CN 12 10/11/2000
 Chapter 4, Page 7

[TABLE 3 (Cont'd)]
HIGH CATEGORY

CODE	PROHIBITED ACTS	SANCTIONS
200	Escape from unescorted Community Programs and activities and Open Institutions (minimum) and from outside secure institutions--without violence.	A. Recommend parole date rescission or retardation.
201	Fighting with another person	B. Forfeit earned statutory good time or non-vested good conduct time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended)
202	(Note to be used)	
203	Threatening another with bodily harm or any other offense	
204	Extortion, blackmail, protection: Demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing	B.1 Disallow ordinarily between 25 and 50% (14-27 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
205	Engaging in sexual acts	C. Disciplinary Transfer (recommend).
206	Making sexual proposals or threats to another	D. Disciplinary segregation (up to 30 days).
207	Wearing a disguise or a mask	E. Make monetary restitution.
208	Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys), or destroying, altering, interfering with, improperly using, or damaging any security device, mechanism, or procedure	F. Withhold statutory good time]
209	Adulteration of any food or drink	
210	(Not to be used)	
211	Possessing any officer's or staff clothing	

[TABLE 3 (Cont'd)]
HIGH CATEGORY (Cont'd)

<u>CODE</u>	<u>PROHIBITED ACTS</u>	<u>SANCTIONS</u>
212	Engaging in, or encouraging a group demonstration	G. Loss of privileges: commissary, movies, recreation, etc.
213	Encouraging others to refuse to work, or to participate in a work stoppage	H. Change housing (quarters)
214	(Not to be used)	I. Remove from program and/or group activity
215	Introduction of alcohol into BOP facility	J. Loss of job
216	Giving or offering an official or staff member a bribe, or anything of value	K. Impound inmate's personal property
217	Giving money to, or receiving money from, any person for purposes of introducing contraband or for any other illegal or prohibited purposes	L. Confiscate contraband
218	Destroying, altering, or damaging government property, or the property of another person, having a value in excess of \$100.00 or destroying, altering, damaging life-safety devices (e.g., fire alarm) regardless of financial value	M. Restrict to quarters]
219	Stealing (theft; this includes data obtained through the unauthorized use of a communications facility, or through the unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored.)	

[TABLE 3 (Cont'd)]
HIGH CATEGORY (Cont'd)

CODE	PROHIBITED ACTS	SANCTIONS
220	Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill (except for drill authorized and conducted by staff)	Sanctions A-M]
221	Being in an unauthorized area with a person of the opposite sex without staff permission	
222	Making, possessing, or using intoxicants	
223	Refusing to breathe into a breathalyser or take part in other testing for use of alcohol	
224	Assaulting any person (charged with this act only when less serious physical injury or contact has been attempted or carried out by an inmate)	
297	Use of the telephone for abuses other than criminal activity (e.g., circumventing telephone monitoring procedures, possession and/or use of another inmate's PIN number; third-party calling; third-party billing; using credit card numbers to place telephone calls; conference calling; talking in code).	
298	Interfering with a staff member in the performance of duties. (<u>Conduct must be of the High Severity nature.</u>) This charge is to be used only when another charge of the high severity is not applicable.	
299	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (<u>Conduct must be of the High Severity nature.</u>) This charge is to be used only when another charge of high severity is not applicable.	

TABLE 3 (Cont'd)
MODERATE CATEGORY

<u>CODE</u>	<u>PROHIBITED ACTS</u>	<u>SANCTIONS</u>
300	Indecent Exposure	A. Recommend parole date rescission or retardation.
301	(Not to be used)	
302	Misuse of authorized medication	B. Forfeit earned statutory good time or non-vested good conduct time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
303	Possession of money or currency, unless specifically authorized, or in excess of the amount authorized	
304	Loaning of property or anything of value for profit or increased return	
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels	B.1 Disallow ordinarily up to 25% (1-14 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
306	Refusing to work, or to accept a program assignment	
307	Refusing to obey an order of any staff member (May be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed; e.g., failure to obey an order which furthers a riot would be charged as 105, Rioting; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered would be charged as Code 110)	C. Disciplinary Transfer (recommend).
308	Violating a condition of a furlough	D. Disciplinary segregation (up to 15 days).
309	Violating a condition of a community program	E. Make monetary restitution.
310	Unexcused absence from work or any assignment	F. Withhold statutory good time.]
311	Failing to perform work as instructed by the supervisor	
312	Insolence towards a staff member	

[TABLE 3 (Cont'd)]
MODERATE CATEGORY (Cont'd)

CODE	PROHIBITED ACTS	SANCTIONS
313	Lying or providing a false statement to a staff member.	G. Loss of privileges: commissary, movies, recreation, etc.
314	Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security, or official paper. (May be categorized in terms of greater severity according to the nature of the item being reproduced; e.g., counterfeiting release papers to effect escape, Code 102 or Code 200)	H. Change housing (quarters).
315	Participating in an unauthorized meeting or gathering	I. Remove from program and/or group activity.
316	Being in an unauthorized area	J. Loss of job.
317	Failure to follow safety or sanitation regulations	K. Impound inmate's personal property.
318	Using any equipment or machinery which is not specifically authorized	L. Confiscate contraband.
319	Using any equipment or machinery contrary to instructions or posted safety standards	M. Restrict to quarters.
320	Failing to stand count	N. Extra duty.]
321	Interfering with the taking of count	
322	(Not to be used)	
323	(Not to be used)	
324	Gambling	
325	Preparing or conducting a gambling pool	
326	Possession of gambling paraphernalia	
327	Unauthorized contacts with the public	
328	Giving money or anything of value to, or accepting money or anything of value from: another inmate, or any other person without staff authorization	

TABLE 3 (Cont'd)
Moderate Category (Cont'd)

CODE	PROHIBITED ACTS	SANCTIONS
329	Destroying, altering or damaging government property, or the property of another person, having a value of \$100.00 or less	Sanctions A-N]
330	Being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards	
331	Possession, manufacture, or introduction of a non-hazardous tool or other non-hazardous contraband (Tool not likely to be used in an escape or escape attempt, or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety; Other non-hazardous contraband includes such items as food or cosmetics)	
332	Smoking where prohibited	
397	Use of the telephone for abuses other than criminal activity (e.g., conference calling, possession and/or use of another inmate's PIN number, three-way calling, providing false information for preparation of a telephone list).	
398	Interfering with a staff member in the performance of duties. (<u>Conduct must be of the Moderate Severity nature.</u>) This charge is to be used only when another charge of moderate severity is not applicable.	
399	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (<u>Conduct must be of the Moderate Severity nature.</u>) This charge is to be used only when another charge of moderate severity is not applicable.	

TABLE 3 (Cont'd)
LOW MODERATE CATEGORY

<u>CODE</u>	<u>PROHIBITED ACTS</u>	<u>SANCTIONS</u>
400	Possession of property belonging to another person	B.1 Disallow ordinarily up to 12.5% (1-7 days) of good conduct time credit available for year (to be used only where inmate found to have committed a second violation of the same prohibited act within 6 months); Disallow ordinarily up to 25% (1-14 days) of good conduct time credit available for year (to be used only where inmate found to have committed a third violation of the same prohibited act within 6 months) (a good conduct time sanction may not be suspended). (See Chapter 4 Page 16 for VCCLEA violent and PLRA inmates.)
401	Possessing unauthorized amount of otherwise authorized clothing	
402	Malingering, feigning illness	
403	Not to be used	
404	Using abusive or obscene language	
405	Tattooing or self-mutilation	
406	Not to be Used	*
407	Conduct with a visitor in violation of Bureau regulations (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G)	
408	Conducting a business	
409	Unauthorized physical contact (e.g., kissing, embracing)	[E.] Make monetary restitution.
* 410	Unauthorized use of mail (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G) (May be categorized and charged in terms of greater severity, according to the nature of the unauthorized use; e.g., the mail is used for planning, facilitating, committing an armed assault on the institution's secure perimeter, would be charged as Code 101, Assault)	F. Withhold statutory good time. G. Loss of privileges: commissary, movies, recreation, etc. H. Change housing (quarters). I. Remove from program and/or group activity.]

TABLE 3 (Cont'd)
LOW MODERATE CATEGORY (Cont'd)

<u>CODE</u>	<u>PROHIBITED ACTS</u>	<u>SANCTIONS</u>
		J. Loss of job.
497	Use of the telephone for abuses other than criminal activity (e.g., exceeding the 15-minute time limit for telephone calls; using the telephone in an unauthorized area; placing of an unauthorized individual on the telephone list).	K. Impound inmate's personal property. L. Confiscate contraband. M. Restrict to quarters.
498	Interfering with a staff member in the performance of duties. <u>Conduct must be of the Low Moderate Severity nature.</u>) This charge is to be used only when another charge of low moderate severity is not applicable.	N. Extra duty. O. Reprimand. P. Warning.
499	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. <u>(Conduct must be of the Low Moderate severity nature.)</u> This charge is to be used only when another charge of low moderate severity is not applicable.	

NOTE: Aiding another person to commit any of these offenses, attempting to commit any of these offenses, and making plans to commit any of these offenses, in all categories of severity, shall be considered the same as a commission of the offenses itself.]

When the prohibited act is interfering with a staff member in the performance of duties (Code 198, 298, 398, or 498), or Conduct Which Disrupts (Code 199, 299, 399, or 499), the DHO or UDC, in its findings, should indicate a specific finding of the severity level of the conduct, and a comparison to an offense (or offenses) in that severity level which the DHO or UDC finds is most comparable.

Example: "We find the act of _____ to be of High severity, most comparable to prohibited act Engaging in a Group Demonstration."

Sanction B.1 may be imposed on the Low Moderate category only where the inmate has committed the same low moderate prohibited act more than one time within a six-month period except for a VCCLEA inmate rated as violent or a PLRA inmate (See Chapter 4, Page 16).